

(RESERVED ON 07.02.2017)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **09th** day of **FEBRUARY, 2017.**

Original Application Number. 1675/2013.

HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J).
HON'BLE MS. NITA CHOWDHURY, MEMBER (A).

1. Amar Nath Pandey, a/a 44 years, S/o Late Shri Ram Raj Pandey, R/o Quarter No. 28, Type-3, Kendranchal Colony, Badlalhalpur, Varanasi.

.....Applicant.

VE R S U S

1. Union of India, through the Chairman Central Board of Direct Taxes, North Block, New Delhi-110001.
2. The Secretary Ministry of Finance Department of Revenue, North Block, New Delhi-110001.
3. The Chief Commissioner of Income Tax (CCA) Aayakar Bhawan, 5 Ashok Marg, Lucknow-2256001

.....Respondents

Advocate for the Applicant : Shri A.K. Singh

Advocate for the Respondents : Shri L.P. Tiwari

O R D E R

(Delivered by Hon'ble Ms. Nita Chowdhury - A.M.)

The present Original Application has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

(i) *To quash/set aside the impugned orders dated 19.08.2013 and communication order dated 03.09.2013 (filed by*

Annexure A-1 with Compilation No. I to this Original Application) passed by respondent. 3.

- (ii) *To direct the respondent no. 3 to grant promotion to the applicant w.e.f. 31.05.2013 alongwith all consequential benefits, keeping in view the judgements of Hon'ble Supreme Court as well as Hon'ble Principal Bench of CAT, New Delhi as well as Hon'ble Tribunal at Lucknow Bench, within the time as specifically this Hon'ble Court.*
- (iii) *To issue any other order or direction which this Hon'ble Court may deem fit and proper.*
- (iv) *To award cost of the Original Application to be applicant.*

2.1 The brief facts of the case as stated by the counsel for the applicant is that the applicant who is presently working as Office Superintendent (OS) in the office of Joint Commissioner of Income Tax Range-3, Varanasi which falls under the CCIT-Charge Lucknow was initially appointed as Upper Division Clerk on 25.07.1995 in the office of Deputy Commissioner of Income Tax, Kolhapur. On the personal request of the applicant he was transferred on his present place of posting by order dated 18.06.1999. The applicant had passed the prescribed Departmental Examination for the post of Income Tax Inspector in the year 1998 prior to his transfer to the present place of posting. It is further submitted that the name of the applicant was considered for inter charge transfer against the direct recruitment quota of U.D.C. in the CCIT Charge Lucknow.

2.2 On 31.05.2013, the respondent no. 3 passed an order being order no. F.No.CC/LKO/A/17/Vol.2013-14 by which four persons were shown to be promoted to the post of Income Tax Inspectors. In the aforesaid promotion order one Mr. H.S. Dhapwal (who is in

reservation quota of S.T.) was working as Stenographer Grade-I in the CIT Charge Haldwani (U.K.) is placed at serial no. 1 who had passed the Departmental Examination in the year 2012, whereas one other person namely Mr. Prashant Kumar Srivastava who is working as Office Superintendent (O.S.) in Varanasi is placed at serial no. 2, who had passed the departmental examination in the year 2001, one Mr. Sammer Kumar Srivastava and Mr. Sunil Kumar Singh, who are working as O.S. along with the applicant are placed at serial no. 3 and 4 respectively in the aforesaid promotion order and they had passed the departmental examination in the year 1999, whereas the applicant has passed the departmental examination in the year 1998.

2.3 Learned counsel for the applicant further submits that in the list of 23 officials for promotion to ITI for Recruitment year 2013-14, the name of the applicant figures at serial no. 9, while he had passed the departmental examination in the year 1998, whereas the name of the persons mentioned in the promotion order dated 31.05.2013 figures at serial nos. 1, 2, 3 and 17 in this list. The name of the official at serial no. 17 is not disputed as he is working in different zone, moreover his name falls under reserved category. However, the names of persons placed at serial no. 1, 2 and 3 in aforesaid list shows that they have passed the departmental examination in the year 2001 and 1999, that is subsequent to the passing year of the applicant i.e., 1998.

2.4 Being aggrieved by the aforesaid promotion of junior persons, the applicant moved a representation before respondent no. 3 on 07.06.2013. The representation dated 07.06.2013 was decided by respondent no. 3 vide order dated 19.08.2013 (impugned order). However, it is alleged that respondent no. 3 has wrongly decided the representation of the applicant as while deciding the representation the respondents have not followed the rules and have passed the impugned order dated 19.08.2013 relying upon the instructions/letter dated 23.01.2003 and 14.05.1990 of the Central Board of Direct Taxes (herein referred to as CBDT). In the aforesaid letters/instructions guidelines have been frame in regard to the inter charge transfer of non-gazetted staff. The instruction/letter of the CBDT says that on inter charge transfer the employee will be placed at bottom of the list of the employees of the concerned cadre in the new charge thus he will loose his seniority in the new charge, moreover the services rendered in the old charge/region by such employees will not be counted in the new charge/region for the purpose of seniority. It is further alleged by the counsel for the applicant that the aforesaid instructions of CBDT are inconsistent with the rules of the department as well as the judgements of the Hon'ble Supreme Court as well as the Principal bench of this Tribunal.

2.5. Learned counsel for the applicant further contended that the impugned order dated 19.08.2013 by which certain officials were

promoted to the post of ITI is liable to be quashed as the issue pertaining to seniority and promotion of non-gazetted staff on Inter Charge Transfer from one charge to another has already been adjudicated by the Hon'ble Supreme Court as well as Principal and Lucknow Bench of this Tribunal.

2.6 The counsel for the applicant has placed his reliance on the Order dated 24.08.2006 passed by the Principal Bench of this Tribunal in similar case in **O.A. No. 2406 of 2005 (Pramod Kumar Versus Union of India and others)** wherein it was held that:-

.....On consideration of the matter and after hearing learned counsel for the parties, we are of the view that Para-2 (g) of CBTD Circular dated 14.05.1990 will have no application as he is not claiming any promotion or confirmation in the old charge. Moreover, the controversy whether he is eligible for promotion or not in the given circumstances stands concluded by the Hon'ble Supreme Court in the aforementioned judgements, which is binding upon this Tribunal under Article 141 of the Constitution of India....

..... Following aforementioned judgement, we have no hesitation to conclude that applicants eligibility to said post of Sr. Tax Assistant cannot be counted from 17.08.1999 as has been done by respondents. Accordingly, we allow the O.A. and quash order dated

01.06.2005. Respondents are directed to consider him for promotion to the post of Sr. Tax Assistant w.e.f, 31.12.2001 instead of 24.10.2003 with all consequential benefits. This exercise shall be completed within a period of two months positively from the date of receipt of a copy of this order...."

2.7 Counsel for the applicant has also relied upon the Order dated 14.02.2013 passed in a similar case by **Lucknow Bench of this Tribunal in O.A. No. 315 of 2012**, wherein the Tribunal held that:-

".... Accordingly, we observe that there is sufficient merit in this O.A. in favour of the applicants. Accordingly, the impugned orders placed at Annexure A-1 are liable to be quashed and the same are set aside. The O.A. is allowed. The respondents are directed to convene the review D.P.C. to consider afresh the cases of the applicant for promotion after counting their regular service in the grade in the erstwhile regions where they were working before transfer, for the purpose of promotion to the post of Senior Tax Assistants if they fulfill other conditions. No order as to costs...."

2.8 The counsel for the applicant has also relied upon the judgement passed by Hon'ble Supreme Court in the case of **Scientific Advisor to Raksha Mantri and others Versus V.M.**

Joseph reported in 1998 (5) SCC 305 in which the Hon'ble Supreme Court has widely and clearly discussed the issue of inter charge transfer of non gazetted staff in regard to promotion. Relevant portion of the judgement is quoted below:-

“..Even if an employee is transferred at his own request, from one place to another on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors...”

In view of this decision, with which we respectfully agree, the direction of the Tribunal that the respondent may be promoted to the post of Senior Store Keeper from an earlier date and the further direction concerning respondent's promotion to the post of Senior Store Keeper, Grade-I, do not suffer from any infirmity. That being so, the appeal has no merits and is accordingly dismissed without, however, any order as to costs....”

2.9. The counsel for the applicant further relied upon the judgement passed by Hon'ble Supreme Court in the case of **Renu**

Mullick Vs Union of India reported in SCC-1974 (1) 373, wherein the Hon'ble Supreme Court **has passed a detailed judgement and has held that that the services rendered in the previous charge has to be taken into consideration for promotion.** Relevant portion of the aforesaid judgement is quoted below:-

"...SERVICE LAW - APPELLANT APPEAL FOR GRANTING HER PROMOTION AS PER HER SENIORITY, BY CONSIDERING PREVIOUS SERVICE LENGTH AND SUBSEQUENTLY PRESENTS SERVICE LENGTH - HELD - TRANSFERRE TREATED AS NEW ENTRANT IN COLLECTORATE TO WHICH SHE IS TRANSFERRED FOR PURPOSE OF SENIORITY - APPELLANT WOULD COME FOR CONSIDERATION FOR PROMOTION AS PER HER TURN IN SENIORITY LIST - HER SERVICE PAST SERVICE CAN NOT BE IGNORED FOR ELIGIBILITY UNDER RULE 4 STATUTORY RULE - SUPREME COURT DIRECT THAT APPELLANT SHALL BE DEEMED TO HOLD THE POST WHEN SHE ORIGINALLY JOINED AS A RESULT OF PROMOTION - APPELLANTS ENTITLED TO ALL THE CONSEQUENTIAL BENEFITS AND BACK WAGES WITH INTEREST - APPEAL ALLOWED. [Central Excise and Land Customs Department Group C Posts Recruitment Rules, 1979]

"...We allow the appeal, set aside the judgment of the Central Administrative Tribunal, Allahabad, dated June 1, 1992 and allow the application of the appellant before the said Tribunal. We quash the order dated February 20, 1992, reverting the appellant, Renu Mullick, from the post of Inspector to the post of Tax Assistant. We direct that the appellant shall be deemed to be continuing to hold the post of Inspector from the date when she originally joined as Inspector as a result of the promotion order dated November 11, 1991. She will be

entitled to all the consequential benefits including full back wages. The arrears of back wages shall be paid to the appellant with 12% interest per annum. The appellant shall also be entitled to the costs of this litigation which we quantify as Rs 10,000..."

3. The counsel for the respondents has filed counter affidavit through which he has submitted that though the applicant had qualified departmental examination for the post of Income Tax Inspector in the year 1998 in his old region, vide CBDT's letter dated 21.01.2003 such official on joining in new region on inter charge transfer are to be placed according to the examination-wise list below all the persons, who have passed the said examination in the new charge up to the date of his transfer. Since, the applicant joined the new charge on 21.06.1999 he was placed in the examination-wise list below all the persons who had passed the said examination of 1999 on 03.06.1999.

3.1 It is contended by the counsel for the respondents that as the applicant had joined the new charge on 21.06.1999, as per the CBDT's letter dated 21.03.2003, he was placed below all the officials of the charge, who passed the departmental examination in the year 1999. Passing the departmental examination of ITI in 1998 at his old region of posting will not entitle him to be placed over and above the persons of this charge.

3.2 It is further submitted by the counsel for the respondents that inadvertently the name of the applicant was included in the eligibility list for promotion to the post of I.T.I treating his year of promotion as 1998 but later on when it was noticed that he is an inter charge transferee, in view of the CBDT's letter dated 21.01.2003, his name was placed in the year of promotion list 1999 below all the officials of this charge, who qualified I.T.I Examination and the applicant cannot claim undue advantage of the mistake committed by the respondents inadvertently.

3.3 Learned counsel for the respondents further submitted that a perusal of the order dated 19.08.13 would reveal that it is a self explanatory order on the subject and the competent authority has considered all the points raised by the applicant in his representation dated 07.06.2013 and after taking into account the relevant rules and instructions on the subject has passed the order dated 19.08.2013.

3.4 It is further contended by the counsel for the respondents that the promotion orders have been passed strictly in accordance with the D.O.Ms instructions 2001 for promotion to the post of I.T.I as well as DoPT & C.B.D.T circulars/directions received from time to time.

3.5 Learned counsel for the respondents have contended that the ratio of the Order of this Tribunal in O.A. No. 315 of 2012 and 2406 of 2006 do not apply in the instant case as the Tribunal has

directed to count the services rendered in old region by an interchange transferee for promotion to next higher grade in new region. The applicant had joined this region in 1999 and he is already possessing minimum qualifying service for promotion to the post of I.T.I, which is three years thereby does not give rise to an issue about which the applicant can be aggrieved and the case of the applicant is different from the facts and issues involved in the aforesaid O.As.

4. The counsel for the applicant filed rejoinder and reiterated the facts as stated in the O.A and the counsel for the respondents has filed supplementary counter affidavit almost reiterating the facts as stated in the counter affidavit.

5. Heard the counsel for both the parties and perused the pleadings available on record.

6. From the rival contentions it is clear that applicant after qualifying the examination conducted by the Staff Selection Commission was appointed on the post of Upper Division Clerk in the year 1995 in the Office of Assistant Commissioner of Income Tax at Kolhapur. In the year 1999, on the personal request of the applicant, he was transferred from Kolhapur to Varanasi, which is his present place of posting. It is pertinent here to mention that the applicant had qualified departmental examination for the post of Income Tax Inspector in the year 1998 prior to his transfer to Varanasi. In the year 2013, the respondent no. 3 passed an Order

dated 31.05.2013 by which certain officials were promoted to the post of ITI who had passed the prescribed departmental examination later than the applicant for the recruitment year 2013-14. Aggrieved by the same the applicant preferred a representation to the respondents on 07.06.2013. However, his representation was rejected by the respondents vide Order dated 19.08.2013 which was communicated to the applicant vide letter dated 03.09.2013. The respondents have contended that impugned Order dated 19.08.2013 was passed taking into consideration the CBDT letter dated 23.01.2003.

7. We find that in the above facts and circumstances of the case, it becomes clear that the respondents have erred in the understanding of the instructions issued by CBDT vide Order dated 23.01.2003. The instructions, in fact, in Para-4 read as under:-

".... The matter has been examined and it has been decided that since a person on inter-charge transfer loses seniority in all respects, the person on inter-charge transfer who has passed the Income Tax Inspector Departmental Examination should be placed in the examination wise list below all the persons who have passed the said examination in the new charge upto the date of his transfer..."

8. The above mentioned para-4 clearly means that on a inter charge transfer a person loses seniority in all respects to another person who has passed the Income Tax Inspector Departmental Examination and **should be placed in the examination wise list**

below all persons who have passed the said examination in the new charge up to the date of his transfer, which means that as the applicant had passed the Income Tax Inspector Departmental Examination in the year 1998, he should be placed in the examination wise list of the year 1998 below all the persons who have passed the said examination.

9. For the above reasons, the O.A. is liable to be allowed. Accordingly, the O.A. is allowed, the impugned orders dated 19.08.2013 and communication order dated 03.09.2013 are quashed and the respondents are directed to place the applicant in accordance with his eligibility according to his year of passing the Departmental Examination i.e., 1998 and consequently revise the orders issued by them in this regard and issue a fresh seniority list placing the applicant in the correct position taking into account the fact that the applicant had passed the Departmental Examination in the year 1998.

10. No order as to costs.

(NITA CHOWDHURY)
MEMBER- A

(JUSTICE DINESH GUPTA)
MEMBER- J

Arun..